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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the International Catholic Child Bureau, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02644(E)

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Institutionalization of Children with Disabilities in Kazakhstan

I. POSITIVE DEVELOPMENTS

Legal and Policy Improvements

1. The Law n° 39-III of 13 April 2005 on "Social Protection of the Disabled" followed by the Government Decree n° 1266 of 21 December 2005 created a Coordination Council in the field of "Social Protection of the Disabled". As for the Government Decree n° 754 of 20 July 2005 on several matters relating to rehabilitation of people living with disabilities, it provides for the Rules for granting prothesis and technical equipment to persons with disabilities, the Rules for granting special equipment for moving persons with disabilities, and the Rules for granting sanatorium treatment to persons and children with disabilities. In addition, to take into account specific needs of children in early childhood, the Law n°114-IV on Special Social Services of 29 December 2008[1], creates conditions to a child (family) with special needs for his/her social and cognitive development.

2. In 2011, the 2012-2018 Plan of action to promote the rights and quality of life of persons with disabilities has been adopted. The 2011-2020 State Program of Education Development aims at covering 50 % of children with disabilities' inclusive education: 9% in 2010, 25% in 2015 and 50% in 2020. In its national report to the Universal Periodic Review process, Kazakhstan asserted that "the proportion of schools capable of providing inclusive education must reach the target of 70% of the total number of general education schools by 2020"[2]. Furthermore, a coordinating Council on Social Protection of Persons with Disabilities has been set up.

3. The establishment of day-care centers has been instrumental as it encouraged family-based care and allowed for the deinstitutionalization of many children living with disabilities, even if families still need more social benefits and financial support.

II. ISSUES OF CONCERN[3]

Social Services Delivery and Violation of the Rights of Children with Disabilities

Trained Staff in State-run Residential Institutions

4. Despite the governmental efforts, children-care institutions lack specialized teachers and professionals to deliver adequate support than can improve stimulation and development, allow educators to ensure relevant activities towards autonomy, rehabilitation and reintegration of the child. Therefore, children with severe disabilities are sometimes neglected and left out without proper care and suitable development activities.

Violence against Children in State-run Residential Institutions

5. Violence in State-run residential understaffed institutions is most of the time generated by the poor quality of the relationship educators/children as well as the child living conditions. Children's personalities as well as some uncontrolled, self-harm and aggressive behaviors linked with their disabilities are not properly managed by care-givers often overwhelmed by the workload and the high number of children they have to take care. Some educators complained about the low salary they get. In some cases, support methods are abusively implemented limiting

[1] Amended on 10 July 2012.

[2] A/HRC/WG.6/20/KAZ/1, § 230.

[3] Kazakhstan has one of the highest rates in children with disability under 18 years old among CIS countries. Whilst the rate is 1,33% in Kazakhstan, it is 0.80% in Tajikistan in 2012, 0.55% in 2005 in Turkmenistan, 1,25% in 2012 in Kyrgyzstan and 1.88% in the Russian Federation in 2010 (Situation Analysis of Children with Disabilities for the Development of an Inclusive Society in the Republic of Kazakhstan, UNICEF, 2014, p. 17).

stimulating activities. Due to abuse and neglect, and verbal, psychological and physical violence, including corporal punishment, some children run away from institutions.

Social Services Provided by NGOs

6. Civil society organizations (CSOs) have been associated to the special social service delivery to children with disabilities. However they do not receive apposite support from the Government. Consequently, they are constrained sometimes to disrupt services' provision when allocated resources are exhausted. These interruptions have negative impact on children, threaten previous efforts, and jeopardize progress made so far by the children.

Early Intervention Challenge

7. The Ministry of Health Protection and Social Development is clearly pushing for the imperative need to implement an early intervention programme for children between 0 and 3 years old who might be affected by development disorders. Nonetheless, in practice, insufficient progress has been made from the Government side. It is proven that 0-3 is a critical period for children, even more for children with disabilities, and needs due attention and investments for pre-schooling. Convinced that early intervention could significantly reduce the institutionalization of abandoned children affected by development troubles, CSOs strived to increase endeavors in that regard. Early multidisciplinary care, support, counseling is likely to avoid the deterioration of symptoms, severe disabilities, and ultimately increase chances of recovery.

8. Despite the Ministry of Health orders n° 83 of 29 January 2003 and n° 478 of 28 September 2009 on "On approval of the Rules for organization of screening of psychological and physical disorders of the early age children", Governmental policies on early interventions and the required collaboration with local executive bodies are still insufficient. Effective actions would have drastically decreased the institutionalization of children, including non-orphan children in State-run institutions, and set up an appropriate environment for the education and rehabilitation of children with disabilities.

9. BICE partner KENES run a rehabilitation center and provide consultation, counseling and early intervention services for young parents of children with disabilities in view of better assessing, certifying and guiding their children to competent services, adequate care, nurseries, kindergartens and schools.

Inclusive Education

10. Inclusive education is a key tool for deinstitutionalization. The State Program of Education Development for 2011-2020[4], identified the increasing number of children with disabilities as a challenge, and recognized that in 2010 "inclusive education has not been developed yet". During his visit to Kazakhstan in September 2011, the Special Rapporteur on the Rights to Education, Kishore Singh, stated that "inclusive education has not yet been developed, and facility provisions to meet the needs of students with physical disabilities have largely yet to be established"[5] and that "specific action is also required to ensure adequate education opportunities for persons with disabilities"[6]. Four years later, in September 2015, the Committee on the Rights of the Child was concerned that "there remains challenges with regard to pedagogical and psychological assistance provided in schools to implement inclusive education and that large numbers of children with disabilities are still not enrolled in mainstream schools or kindergartens"[7].

11. Therefore, it is quite a paradox that the education of children with disabilities does not fall under the regular education regime and the Ministry of Education has no competence over this topic which is dealt by the Ministries of Labor and Social Affairs, and Health.

12. In addition, the education system is not effectively inclusive. Children living with disabilities are placed in boarding schools and special remedial institutions. Many public schools are not adequately equipped, including with school infrastructures such as classrooms, and pedagogical tools to accommodate these children with their specific needs.

[4] Approved by the Presidential Decree n°1118 of 7 December 2010.
[5] A/HRC/20/21/Add.1 (2011), § 69
[6] Op. cit, § 6.
[7] CRC/C/KAZ/CO/4 (2015), § 40.

There is also a deficit of trained teachers to properly provide them with disability-adapted education. As a result, many schools refuse enrolment of children with disabilities.

III. RECOMMENDATIONS

13. We recommend the Government of Kazakhstan to:

a. Strengthen its national legal framework by ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities, and adopt a comprehensive national strategy in accordance with articles 23 and 27 of Convention on the Rights of the Child, the General Comment n°9 (2006) of the Committee on the Rights of the Child, and the General Assembly resolution 48/96 on Standard Rules on the Equalization of Opportunities for Persons with Disabilities, so as to facilitate and sustain *inter alia* the deinstitutionalization process.

b. Effectively implement early identification and intervention programmes for early support and care to avoid systematic institutionalization and irremediable situations.

c. Ensure effective implementation of the quota policy, flexible curriculum, and adapted equipments, to guarantee full access to children with disabilities to public preschools, schools and kindergartens.

d. As alternatives to institutionalisation, ensure family-based care options with adequate support services and sufficient social benefits for families to provide care at home for their children, and when institutionalisation is inevitable, place children as nearer as possible to their parents' home.

e. Provide initial, continued and specialized training to professional staff working with or for children with disabilities, such as medical, paramedical and related personnel, teachers, social workers, and other care givers, including on innovative approaches to special education, severe disability management, and genuine stimulation methods.

f. Establish a monitoring system, with the participation of local executive bodies and CSOs, to regularly assess the quality of services towards inclusive education and within residential institutions, including revision of placement decisions, the control of living conditions, analysis of complaints from children, and prevention of violence and deaths in residential institutions.

g. Combat violence against children with disabilities in State-run residential institutions and schools, allow children to report abuses, and ensure that genuine child-friendly pedagogical methods are implemented.

h. For the improvement of legislations, policies and practices, establish a comprehensive disaggregated data collection system to gather accurate statistical data on children with disabilities in Kazakhstan.

KENES, an NGO without consultative status, also shares the views expressed in this statement.

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Please recycle

Online Child Sexual Abuse in Poland

1. Legislation

1.1. Chapter 25 of the Penal Code entitled "Crimes against sexual freedom and decency" and especially its articles 202 § 3 (), 202 § 4b (virtual child pornography) globally follow the spirit of articles 19 and 34 of the Convention on the Rights of the Child. Provisions contained in article 197 are related to sexual intercourse by force, illegal threat or deceit subjects and rape whilst article 200 refers to sexual intercourse with a minor less than 15 years old subjected to a sexual act or submitted to perform such an act. Taking into account the increasing number of cases of online child abuse, article 200a on "grooming" introduced by the 5 November 2009 amendments to the Penal Code, allows for penalisation of seducing children online. Furthermore, April 1990 amendment of the Act on the Police has already introduced the possibility to ensure control with regard to offences under the new article 200a. In addition, Poland ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on 20 February 2015 which entered into force on 1 June 2015.

1.2. Recommendation:

(a)Harmonize the domestic legislation with the Lanzarote Convention, including articles 18 to 23 and the investigation, prosecution and procedural provisions, taking into account current gaps in the national legislation as well as the opinion on article 23 and its explanatory note adopted by the Lanzarote Committee on 17 June 2015[1].

2. From the Increasing Access to the Internet to the Growing Threat for Children in Poland

2.1. Like elsewhere in the world, Information and communication technologies (ICTs) increase access to the internet in Poland, offering empowerment tools for people, including children and adolescents who expose themselves to both opportunities and risks. As children access to the internet is increasing and technological innovations transform the relationships, interactions and societies around the world, the threats to the safety of young people– including new types of child sexual abuse and exploitation – also increase.

2.2. The exposure to harmful online content is a reality, a situation in which a child accidentally or intentionally views pornographic or other content that is judged as detrimental to his integral development. European Union NET ADB research conducted by *Nobody's Children Foundation*[2] in 2013 shows that 67% of respondents aged 14-17 have come across pornographic content online, and 32% of them have found the experience disturbing and unpleasant[3]. It is more common for boys to experience exposure to pornographic materials. Internet has become a setting in which pornography is easily accessible, and even extreme forms of pornography are not efficiently protected from access by young people.

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[1] See also the General Comment n° 13 by the UN Committee on the Rights of the Child on "The right of the child to freedom from all forms of violence", CRC/C/GC/13 (2011).

[2] Nobody's Children Foundation (NCF), BICE partner in Poland, launched in 2004 a national campaign called "You never know who is on the other side" to addressing the problem of online grooming. In 2010, as an answer to the long-awaited amendment to the Penal Code, concerning penalization of online grooming, the campaign was reinforced and extended as "Every step online leaves a trace". The other NCF media campaign in this area also included a recent "I think, therefore I don't send" campaign addressing the problem of sexting among youth. As part of the national program "We protect children" implemented with Ministry of Education, NCF initiates systemic solutions in schools across the country. In the field of online safety and new technologies, those solutions comprise of three main processes: education and capacity building (of professionals working with children and youth, education of children and youth and parents), implementation of procedures of responding and support (towards victims, perpetrators and bystanders), construction of secure internet/Wi-Fi infrastructure on the school premises. Moreover, NCF operates two helplines: 116 111 for children and youth and 800 100 100 for parents and professionals experiencing safety concerns about children that allow for detection of abuse and support of children and youth.

[3] Research on Internet Addictive Behaviours among European Adolescents, 2013.

2.3. Due to the expansion of the availability and accessibility of ICT, offenders are able to gain easier access to children via social media, social networking sites, community games, chat rooms, blogs, online forums and other online communication tools. It is also much easier to access information about the victims. Young people have a tendency to uncritically share their personal information, often neither understanding the risks associated with such behavior nor the characteristics of social networking sites as geotagging, geolocating or checking in which make it easier for offenders to gain knowledge of the child location. Personal information found online can greatly facilitate the grooming process, as perpetrators can tailor their approach based on that knowledge.

3. Digital Poland and Online Child Sexual Abuse (CSA)

3.1. The Operational Programme Digital Poland 2014-2020 plans to strengthen digital foundations for the country socio-economic development but aims neither at fostering access to internet at school nor including children as such. Digital Poland could have been instrumental in maximizing internet benefit to children and safeguarding their best interests through a series of prevention, assistance and protection mechanisms to minimize risks on internet and social media. At the digital age where internet and social media become a "playing ground" for children and adolescents, early education programs at school are needed to sensitize, inform and educate them about safe navigation and risks they could encounter.

3.2. Recommendations:

(a) Current objectives of the Digital Poland 2014-2020 should further integrate schools as key State institutions to benefit from the program and implement effective awareness and sensitization courses that associate parents;

(b) For the protection of (potential) victims, implement procedures and enforce support mechanisms that are transparent, accessible and enforceable in schools as well as in other child care or training institutions.

4. Online Grooming

4.1. Even though it is difficult to give precise statistics on the magnitude of online grooming in Poland, because of the underreporting cases, some grooming reported cases allow for some indications. Hence, between October 2014 and October 2015, there were 159 cases reported to helpline 116 111 operated by *Nobody's Children Foundation*. Five years ago in 2010, a legal reform of the Polish Penal Code (PC) introduced new protection provisions for children.

4.2. As a result, the number of initiated proceedings and crimes recorded has been gradually increasing. From only 34 cases for initiated proceedings and 6 recorded crimes reported in 2010, statistics reached 156 for initiated proceedings and 129 recorded crimes in 2014, an increase of 53% and 75% respectively[4] in four years.

5. Sexting

5.1. Research conducted in 2014 for *Nobody's Children Foundation* shows that 11% of young people sent sexually explicit or sexually suggestive materials, while one-third of the respondents received such materials (photos or recordings). This alarmingly phenomenon of sexting has been confirmed during meetings and activities with youth conducted by NCF trainers, during which the problem of sexting is often raised by youth themselves. In addition, it is mirrored in the helpline reports. Increasingly noticeable issue is broadcasting of live sexual activities via such portals as *showup.tv*, which is in theory addressed to adults however it can be easily accessed by everyone and there have been reports of minors performing sexual acts live for profit. Mass availability of devices with internet access has increased the production of self-generated sexual content and eased the distribution process – such materials are often disseminated without the consent of the creator or maybe obtained and distributed from children's hacked accounts, computers or other devices.

6. Prevention Policies and Measures

[4] In 2011, 64 initiated proceedings and 62 recorded crimes; in 2012, 84 and 74; and in 2013, 129 and 132.

6.1. Poland has not a specific prevention programme dealing with online and offline child sexual abuse despite the harmful impact of both online and offline child abuse. Schools, children, parents and community as a whole as well as the internet, software and hardware industry are not adequately sensitised, informed, formed and educated to appropriately prevent and address sexting, grooming and other online risks and abuse.

6.2. Recommendations:

(a)Establish a mandatory self regulatory framework for private sector companies dealing with internet, including mobile phones, computers, network hardware and software providers to fight online abuses;

(b)Ensure that internet providers, sex and ICT industry as a whole, set up on the web and other accessible public online products, safety nets that inform children about potential danger, how they can get help and allow for abuse reporting;

(c)Implement national sensitization and awareness raising campaigns mobilizing schools, children and youth institutions as well as parents in order to maximize opportunities for accessing internet and minimize risks for children, and ensure effective collaboration between all concerned stakeholders;

(d)Strengthen the ongoing capacity building among professionals working with children and youth.

7. Investigation and Prosecution of Online CSA Cases

7.1. As for online sexual abuse, article 19 of the 6 April 1990 Act on the Police provides the police with legal resources to order operational control or preliminary investigation where there are reasonable suspicions of online abuse or beginning of abuse. However, the provisions do not specifically touch upon the complex situation of online evolving exploitation modus operandi of internet wrongdoers. Multifaceted and complex situations required sounds and suitable solutions. Yet, the police needs more innovative technical investigation tools to counter cyber criminality. In addition, the current legal framework does not give police all necessary means to investigate grooming, bullying and sexting cases.

7.2. Recommendations:

(a)Create a special police unit duly mandated and appropriately equipped to track cyber wrongdoers abusing children online and provide specific training to its officials on the rights of the child;

(c)Establish child friendly mechanisms for online and offline CSA reporting *inter alia* through reinforcement of helpline services that should be free and accessible, and connect victims or children at risks to appropriate child adapted counselling and rehabilitating services;

(d)Create a permanently updated database with information related to online abusers and ensure effective cooperation with Interpol in terms of data sharing for investigation and tracing of alleged child abuse perpetrators online;

(e)Establish or strengthen cooperation between Polish police and investigation services and Interpol to better track cyber criminals inside and outside Poland.

Nobody's Child Foundation (NCF), an NGO without consultative status, also shares the views expressed in this statement.